STATE OF MICHIGAN

COURT OF APPEALS

ROBERT EDWARD ELDE, Plaintiff-Appellee,	UNPUBLISHED June 4, 2013
v	No. 308638 Michigan Compensation Appellate Commission
CASTLES BROTHERS, INC., Defendant-Appellant.	LC No. 10-000162

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

In this workers' compensation case, defendant, Castles Brothers, Inc., appeals by leave granted the order of the Workers' Compensation Appellate Commission (WCAC) affirming in part and remanding for further proceedings the magistrate's decision granting the petition for benefits of plaintiff, Robert Edward Elde. We affirm and remand for the sole purpose of changing plaintiff's last day of work to July 11, 2008.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff worked for defendant for 18 years as a kitchen and bathroom remodeler, beginning in 1990 and ending on July 11, 2008. Defendant provided plaintiff with the details and the estimated number of hours for each job, and plaintiff would submit an invoice to defendant listing the number of hours that he worked for each job. Although defendant neither required plaintiff to work a certain number of hours or days nor guaranteed plaintiff a minimum number of hours or jobs, plaintiff usually worked Monday through Friday from about 8:00 or 8:30 a.m. to 4:30 or 5:00 p.m. Defendant initially paid plaintiff $20 per hour in 1990, but by 2008, defendant's hourly rate increased to $28 per hour. Defendant required plaintiff to submit a timesheet for approval on a weekly or biweekly basis. Defendant paid plaintiff's wages with 1099 tax forms, listing plaintiff as self employed. For his work with defendant, plaintiff obtained materials from defendant's storage facility or various hardware stores with defendant's company charge account. Plaintiff used either his truck or defendant's truck, and he used both his personal tools and defendant's tools to complete each job. Defendant required plaintiff to maintain commercial general liability insurance, and plaintiff did so as sole proprietor "Bob Elde d/b/a Bob Elde, Builder."

Between 1990 and 2008, plaintiff obtained almost all of his personal income from defendant. Plaintiff also worked as a music director for his church beginning in either 1995 or 1998; the church paid him about $100 per week and covered his health insurance. Although plaintiff was the sole proprietor of "Bob Elde, Builder," he never advertised for this business or employed anyone. Plaintiff had business cards in the 1990s but did not use or update them after 2000. Plaintiff also had a business checking account that he closed in April 1999. According to plaintiff, he occasionally, through "word of mouth," performed about two or three remodeling projects for friends each year during available weeknights and weekends, earning about $2,000 each year.

While working for defendant at a job in March 2008, plaintiff "kinda twisted [his] back" and "kinked up [his] back a little bit" while carrying a box of tile from a garage. Plaintiff continued to experience relatively mild back pain in the weeks that followed. In June 2008, plaintiff's back pain intensified. Plaintiff first sought treatment from a chiropractor, Dr. Jerry McClane, to whom he identified himself as self employed and denied that the cause of his back problem was an accident, injury, or fall. Plaintiff later obtained an MRI on July 8, 2008, which showed disc degeneration or protrusion at "almost every level of the spine." On July 13, 2008, plaintiff's back pain abruptly intensified to the extent that he could hardly walk. As a result, Dr. Vivekanand Palavali performed emergency back surgery on plaintiff on July 14, 2008. Dr. Palavali diagnosed plaintiff with cauda equina compression syndrome. According to Dr. James Wessinger, the July MRIs both showed "left sided disc herniation at L3-L4"; the July 14 MRI "revealed the same findings [as July 8] but the L3-L4 central stenosis was classified as severe." Since the surgery, plaintiff has only been able to walk with the assistance of a walker or a cane.

On or about September 9, 2008, plaintiff filed an application for mediation or hearing with the Workers' Compensation Agency. The application indicated that plaintiff suffered an injury in March 2008 when he "slipped on ice causing severe injury to [his] back." The application included two illegible signatures certifying the accuracy of the application, and a typed name next to each respective signature indicated that the application was signed by plaintiff and plaintiff's counsel. However, plaintiff's signature was denoted "for RE," suggesting that another person executed the application on plaintiff's behalf. On or about May 13, 2009, plaintiff filed an amended application that also included another person's signature on plaintiff's behalf and again the assertion that "[e]mployee slipped on ice causing severe injury to the back."[1] On or about December 17, 2009, plaintiff filed a second amended application. The second amended application indicated that plaintiff suffered two injures: one in March 2008 and a second in July 2008 on plaintiff's last day of work. This application described plaintiff's injury in relevant part as "[e]mployee sustained serious injury to back at work in March 2008." The application includes the same certifying signatures as the original application. On or about January 25, 2010, plaintiff filed a third amended application. This application was identical to the second amended application, but it added a claim against the Second Injury Fund/Dual

[1] This amended application is not included in the record, but the relevant information regarding this amended application was addressed at trial.

Employment Provision of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*

During defense counsel's cross-examination of plaintiff at trial, defense counsel showed plaintiff the original September 9, 2008, application. Plaintiff acknowledged that, contrary to the statements in the application, his injury was not caused by slipping on ice. Plaintiff also denied signing the application, at which point plaintiff's counsel noted that he had signed the original application on plaintiff's behalf. Defense counsel then moved for dismissal, stating that "if this indeed is not the signature of the claimant then I would move for dismissal under 222 of the Act." The magistrate immediately denied the motion. Defense counsel then showed plaintiff the May 13, 2009, amended application. Again, plaintiff denied signing the application and acknowledged that, contrary to the statements in the application, his injury was not caused by slipping on ice. Defendant again moved for dismissal for "non-conformity with Section 222 of the Workers' Compensation Act," contending that the amended application did not provide it with adequate notice of the nature and circumstances of plaintiff's injury. In response, plaintiff emphasized that he subsequently filed amended applications correcting the false information and that the false statements on the first two applications were not willful misstatements. The magistrate denied defendant's motion, explaining that defendant did not move for dismissal before trial and that the last two applications did not refer to slipping on ice.

The magistrate entered his opinion on October 13, 2010. The magistrate dismissed the Dual Employment Fund as a defendant and made the following findings and conclusions: plaintiff was defendant's employee under the WDCA; plaintiff suffered a disability entitling him to both medical and weekly wage-loss benefits; plaintiff's date of disability was July 14, 2008 (the date that he was hospitalized); plaintiff worked at least 39 of the last 52 weeks of the year before plaintiff became disabled ;and plaintiff's average weekly wage was $1,120 on the basis of a wage of $28 per hour for a 40-hour work week.

The WCAC entered its opinion on January 23, 2012. The WCAC affirmed the magistrate's finding that plaintiff was an employee of defendant. Addressing whether the magistrate erred by calculating plaintiff's average weekly wage, the WCAC stated, "We cannot resolve this issue based on this record and must therefore remand for further evidence and specific findings on which section of MCL 418.371 the magistrate relied upon and the reason therefore." The WCAC affirmed the magistrate's denial of defendant's motions to dismiss under MCL 418.222, reasoning that defendant responded to plaintiff's applications as if they were complete, defendant did not object to the applications until trial, and the amended applications deleted the erroneous reference to a slip on ice. Finally, the WCAC affirmed the magistrate's finding that plaintiff suffered a disability entitling him to benefits; however, it amended the date of injury to July 12, 2008, which it opined was plaintiff's last day of work.

II. ANALYSIS

A. EMPLOYEE UNDER MCL 418.161

Defendant first argues that plaintiff was an independent contractor and, therefore, that the WCAC erred by concluding that plaintiff was defendant's employee under the WDCA. We disagree.

On an appeal from the WCAC, this Court reviews the decision of the WCAC, not the magistrate. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). We review de novo questions of law decided by the WCAC. *Id.* at 697 n 3. Absent fraud, the findings of fact made or adopted by the WCAC are conclusive if there is "any competent supporting evidence in the record"; however, "a decision of the WCAC is subject to reversal if the WCAC operated within the wrong legal framework or if its decision was based on erroneous legal reasoning." *Schmaltz v Troy Metal Concepts, Inc*, 469 Mich 467, 471; 673 NW2d 95 (2003). Whether plaintiff is an employee as defined by the WDCA is a question of law that we review de novo. See *McCaul v Modern Tile & Carpet, Inc*, 248 Mich App 610, 615; 640 NW2d 589 (2001).

The WDCA "requires that employers provide compensation to employees for injuries suffered in the course of the employee's employment, regardless of who is at fault." *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 570; 592 NW2d 360 (1999). If a person is an "independent contractor," not an employee, then the person is not entitled to WDCA compensation. *Id*. at 571. To determine whether a person is an "employee" under the WDCA and thus entitled to compensation, it is necessary to apply the definition of "employee" set forth in MCL 418.161. *Id*. at 570-571. At the time relevant to this case, MCL 418.161 read as follows, in pertinent part:

> (1) As used in this act, "employee" means:
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> (*l*) Every person in the service of another, under any contract of hire, express or implied . . . .
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> * * *
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> (n) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act. [2002 PA 427.]

Our Supreme Court has explained that whether a person is an employee or an independent contractor is determined by applying a two-step test. *Reed v Yackell*, 473 Mich 520, 530; 703 NW2d 1 (2005) (TAYLOR, C.J., YOUNG and MARKMAN, JJ., concurring); see also *Hoste*, 459 Mich at 571-573. First, it is necessary to determine whether the person satisfies MCL 418.161(1)(*l*). *Reed*, 473 Mich at 530. Second, it is necessary to determine whether the person satisfies MCL 418.161(1)(n). *Id*. Under MCL 418.161(1)(n), a "person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury" must meet the following three conditions to be an employee: (1) the person does not maintain a separate business offering the same service, (2) the person does not hold himself or herself out to and render the same service to the public, and (3) the person is not an employer subject to the WDCA. *Id.* at 530 n 13, 535-536; *McCaul*, 248 Mich App at 616. If the person

satisfies both MCL 418.161(1)(*l*) and MCL 418.161(1)(n), then the person is an employee. *Reed*, 473 Mich at 530.

In this case, the parties do not dispute that plaintiff performed a service for defendant under a "contract of hire" and, thus, agree that MCL 418.161(1)(*l*) is satisfied. Instead, defendant contends that plaintiff did not satisfy MCL 418.161(1)(n). We find no legal or factual error regarding the WCAC's conclusion that plaintiff was an employee under the WDCA.

First, plaintiff is not an employer subject to the WDCA. See MCL 418.161(1)(n). MCL 418.151 addresses employers that are subject to the WDCA. MCL 418.151(a) provides that various specified governmental entities are subject to the WDCA; this subsection does not apply to plaintiff because he is not a governmental entity. MCL 418.151(b) provides in relevant part that "[e]very person . . . who has any person in service under any contract of hire" is subject to the WDCA, with certain exceptions. Neither party contends that plaintiff ever had an employee after 1990. And the only competent evidence is that plaintiff did not have any employees.

Second, competent evidence supports the WCAC's affirmance of the magistrate's finding that plaintiff did not maintain a separate business. See MCL 418.161(1)(n); *Schmaltz*, 469 Mich at 471. Defendant insists that plaintiff was an independent contractor because he was self employed through his sole proprietorship (Bob Elde, Builder), obtained commercial insurance, and claimed his income by filing 1099 income-tax forms. We recognize that this evidence is relevant to the question of plaintiff's employee status and supports a finding that plaintiff was an independent contractor. See *McCaul*, 248 Mich App at 617 (explaining that use of a "Form 1099" suggests that a person is an independent contractor); *Loos v JB Installed Sales, Inc*, 485 Mich 993, 993; 775 NW2d 139 (2009) (stating that income-tax records are directly relevant to the question of employee status). Nevertheless, this evidence does not eliminate the competent evidence supporting the finding that plaintiff did not maintain a separate business. For 18 years, plaintiff worked typical 40-hour work weeks for defendant at a set wage and was required to submit either weekly or biweekly timesheets. Although plaintiff performed two or three remodeling projects for friends and fellow church members by "word of mouth" each year, plaintiff obtained the vast majority of his yearly income from defendant.[2] Plaintiff testified that he was too busy to maintain a separate business in kitchen and bathroom remodeling or construction. He closed his business checking account in April 1999. Moreover, the evidence at trial was that plaintiff maintained commercial general liability insurance because defendant required it and that it was defendant's policy to use 1099 forms for plaintiff. Given this competent evidence that plaintiff did not maintain a separate business offering the same service, the WCAC did not err by affirming the magistrate's finding that plaintiff did not maintain a separate business.

[2] We note that although plaintiff obtained supplemental income and health insurance by working at his church, plaintiff's work at the church is not a "separate business" under MCL 418.161(1)(n) because the construction services for defendant were wholly distinguishable from the music-director services for the church. See *Reed*, 473 Mich at 536-537.

Third, competent evidence supports the WCAC's affirmance of the magistrate's finding that plaintiff did not hold himself out to and render construction services to the public. See MCL 418.161(1)(n); *Schmaltz*, 469 Mich at 471. Plaintiff had not maintained business cards since 2000, and the phone number on those cards contains a long-outdated area code. He did not advertise construction or remodeling services. In keeping with defendant's request, soon after he began working for defendant plaintiff took the magnetic sign advertising "Bob Elde Remodeling" off his vehicle. Although plaintiff occasionally performed miscellaneous jobs for friends and members of his church, he obtained these jobs through "word of mouth" because of his reputation as a carpenter. A skilled laborer such as plaintiff may provide services for a friend or acquaintance without rendering himself or herself a public business. To conclude otherwise could mean that an automobile mechanic employed by a certain company becomes an independent contractor simply by working on an engine for a friend. Given that plaintiff only completed miscellaneous jobs a few times a year, coupled with the absence of any evidence that plaintiff attempted to publicize his construction services, the finding that plaintiff did not hold himself out to and render services to the public is supported by competent evidence. See *Schmaltz*, 469 Mich at 471.

Accordingly, because plaintiff satisfied both MCL 418.161(1)(*l*) and MCL 418.161(1)(n), the WCAC did not err by concluding that plaintiff was an employee under the WDCA. See *Reed*, 473 Mich at 530.

B. WCAC'S REMAND UNDER MCL 418.861a(12)

Defendant next argues that the WCAC committed "legal error" by remanding to the magistrate for further evidence regarding plaintiff's average weekly wage. However, defendant does not provide this Court with any legal authority for the proposition that the WCAC commits "legal error" by remanding a case to a magistrate for additional evidence. Indeed, defendant does not provide this Court with any authority regarding the WCAC's ability to remand. An appellant may not simply announce its position without providing citation to supporting authority and, thus, leave it to this Court to discover and rationalize the legal basis for its claims. *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 530; 730 NW2d 481 (2007). Therefore, we conclude that defendant has abandoned this issue. But, notwithstanding defendant's abandonment, we conclude that there is no error.

We review for an abuse of discretion a decision by the WCAC to remand to the magistrate. See *Sullivan v Dep't of Corrections*, 185 Mich App 157, 161-162; 460 NW2d 253 (1990) ("[W]e find no abuse of the discretion afforded the [workers' compensation] appellate commission by MCL 418.861a(12) . . . in refusing plaintiff's request for remand . . . ."). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Under the WDCA, a worker is entitled to compensation for "after-tax average weekly wage." *Schmaltz*, 469 Mich at 469. MCL 418.371 addresses "average weekly wage" determination and reads in relevant part as follows:

> (2) As used in this act, "average weekly wage" means the weekly wage earned by the employee at the time of the employee's injury . . . . The average

> weekly wage shall be determined by computing the total wages paid in the highest paid 39 weeks of the 52 weeks immediately preceding the date of injury, and dividing by 39.
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> * * *
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> (6) If there are special circumstances under which the average weekly wage cannot justly be determined by applying subsections (2) to (5), an average weekly wage may be computed by dividing the aggregate earnings during the year before the injury by the number of days when work was performed and multiplying that daily wage by the number of working days customary in the employment, but not less than 5.

To constitute "special circumstances" warranting application of MCL 418.371(6), subsection (2) must be inapplicable under the facts of the case. See *Toth v AutoAlliance Int'l, Inc (On Remand)*, 246 Mich App 732, 739; 635 NW2d 62 (2001).

In this case, plaintiff testified that defendant paid him at a rate of $28 per hour in 2008 and that he worked Monday through Friday from about 8:00 or 8:30 a.m. to about 4:30 or 5:00 p.m. Plaintiff also testified that defendant paid him about $40,000 between March 2007 and March 2008. Plaintiff did not explicitly testify that this pay scheme existed between July 2007 and July 2008, the relevant time period for purposes of MCL 418.371(2). When determining that plaintiff's average weekly wage was $1,120, the magistrate found that plaintiff usually worked five eight-hour days each week making $28 per hour. The magistrate also found that plaintiff worked at least 39 of the last 52 weeks of the year before plaintiff became disabled. Nevertheless, the WCAC opined that the facts of record were not clear and that the magistrate did not articulate if subsection (2) or subsection (6) was used to calculate plaintiff's average weekly wage. Thus, the WCAC remanded for "further evidence and specific findings on which section of MCL 418.371 the magistrate relied upon and the reason therefore."

We conclude that the WCAC did not abuse its discretion by remanding to the magistrate for further evidence and specific findings. Under the WDCA, "[t]he commission or a panel of the commission may remand a matter to a worker's compensation magistrate for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review." MCL 418.861a(12). Here, the WCAC determined that the record was insufficient to review the wage issue because the facts were not clear and the magistrate did not articulate which subsection of MCL 418.371 was used to calculate the average weekly wage. Because the WCAC determined that the record was insufficient, the WCAC could remand to the magistrate to provide the WCAC with what it determined was necessary to make the record sufficient or 2"complete." See *id.*

The WCAC has repeatedly interpreted MCL 418.861a(12) as providing it with the discretionary authority to remand to the magistrate for additional proofs when the record before it is insufficient. See, e.g., *Grinnell v SDW Holdings Corp*, 2008 Mich ACO 111 ("The record may be expanded when insufficient for appellate review. MCL 418.861a(12). . . . Under section 861a(12), we remand to allow additional proofs . . . ."); *O'Leary v Northwest Airlines Inc*, 2008 Mich ACO 70 ("[W]e must remand for additional proofs and analysis because we find

the record insufficient for review. MCL 418.861a(12)."); *Armstrong v House of Prime*, 2008 Mich ACO 52 ("Accordingly, when the record is not complete and it is appropriate for additional evidence to be allowed into the record, a remand to the magistrate is permitted by the Act. MCL 418.861a(12)."); *Gibbons v Ford Motor Co*, 1993 Mich ACO 520 ("It is entirely within the Commission's discretion to remand, or to decline to remand, a matter for the magistrate's consideration of additional evidence . . . ."). Although the WCAC in the present case did not reference MCL 418.861a(12) when it remanded for further evidence, the WCAC's order is consistent with this interpretation of MCL 418.861a(12). We afford considerable deference to the WCAC's interpretation of a provision of the WDCA unless the WCAC's interpretation is clearly incorrect. *Cain v Waste Mgt Inc*, 259 Mich App 350, 366; 674 NW2d 383 (2003); see also *Maier v Gen Tel Co of Mich*, 247 Mich App 655, 660; 637 NW2d 263 (2001). We cannot conclude that an interpretation that MCL 418.861a(12) authorizes the WCAC to remand to the magistrate for additional proofs when the record before it is insufficient is a clearly incorrect interpretation of MCL 418.861a(12). *Maier*, 247 Mich App at 660; see also *Cain*, 259 Mich App at 366.

Finally, we reject defendant's contention that the WCAC's remand affords plaintiff "a second bite of the apple." Plaintiff presented evidence to the magistrate regarding his hourly rate, hours worked per week, and yearly income. The WCAC opined that the facts of record concerning plaintiff's average weekly wage were "not clear"—not that plaintiff failed to present sufficient evidence regarding his average weekly wage and that plaintiff should have a second opportunity to do so. Remanding to clarify the record facts through additional evidence does not improperly provide plaintiff "a second bite of the apple."

Accordingly, we conclude that the WCAC's decision to remand to the magistrate to clarify the record facts through additional evidence did not fall outside the range of principled outcomes. The WCAC did not abuse its discretion.

C. DEFENDANT'S MOTIONS UNDER MCL 418.222

Defendant also argues that both the magistrate and the WCAC erred by failing to dismiss plaintiff's claim on the basis that plaintiff violated MCL 418.222 by providing false information in his original application and by failing to specifically identify the date and nature of injury. We disagree.

MCL 418.222 reads in relevant part as follows:

> (1) After March 31, 1986, the bureau, upon receiving a completed application for mediation or hearing from a claimant, shall forward a copy of the application to the employer and carrier. Within 30 days of receiving a completed application for mediation or hearing from the bureau, the carrier shall file a written response to the application with the bureau upon a form provided by the bureau. *Any application for mediation or hearing or any written response which is determined by the bureau to be incomplete shall be returned with an explanation of the additional information needed.*
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> * * *

> (3) The application for mediation or hearing shall be as prescribed by the bureau and shall contain factual information regarding the nature of the injury, the date of injury, the names and addresses of any witnesses except employees currently employed by the employer, the names and addresses of any doctors, hospitals, or other health care providers who treated the employee with regard to the personal injury, the name and address of the employer, the dates on which the employee was unable to work because of the personal injury, whether the employee had any other employment at the time of, or subsequent to, the date of the personal injury and the names and addresses of the employers, and any other information required by the bureau.
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> (6) *The willful failure of a party to comply with this section shall prohibit that party from proceeding under this act.* [Emphasis added.]

The word "shall" indicates mandatory action. *Snyder v Gen Safety Corp (On Remand)*, 200 Mich App 332, 334; 504 NW2d 31 (1993). Thus, the bureau must return an application for mediation or hearing to a party and explain what additional information the bureau needs when the bureau determines that the application is incomplete. See MCL 418.222(1). However, if a party willfully fails to comply with MCL 418.222, then that party is barred from proceeding under the WDCA. See MCL 418.222(6).

MCL 418.861a(11) provides that "[t]he commission or a panel of the commission shall review only those specific findings of fact or conclusions of law that the parties have requested be reviewed." In this case, defendant consistently argued to both the magistrate and the WCAC that plaintiff's claim should be dismissed because he did not provide correct information about the nature of his injury as required by MCL 418.222(3). However, defendant has not linked the requirement imposed by MCL 418.222(3) with the resulting mandatory dismissal under MCL 418.222(6) for "willful" failure to comply. At no point in the proceedings before the magistrate and the WCAC did defendant specifically reference subsection (6) of MCL 418.222 or argue that plaintiff's alleged noncompliance with MCL 418.222 was "willful." Therefore, MCL 418.861a(11) prohibited the WCAC from considering whether defendant was entitled to dismissal under MCL 418.222(6).

Significantly, the issue of whether defendant is entitled to dismissal under MCL 418.222 does not end with a conclusion that plaintiff violated MCL 418.222(3). It is also necessary to determine whether the violation was willful because MCL 418.222(6) only prohibits a party from proceeding under the WDCA if that party has willfully failed to comply with MCL 418.222. See MCL 418.222(1), (6). A party may violate MCL 418.222(3) and, nonetheless, not be barred from proceeding under the WDCA if the party's violation was not willful. Even assuming that plaintiff violated MCL 418.222(3) by providing false or incomplete information in his applications, the WCAC could not dismiss plaintiff's claim under MCL 418.222 if defendant failed to argue that plaintiff willfully violated MCL 418.222. See MCL 418.861a(11). Moreover, we decline to address whether defendant is entitled to dismissal under MCL 418.222(6) because the issue has not been properly preserved. See *Auto-Owners Ins Co v Amoco Prod Co*, 468 Mich 53, 65-66; 658 NW2d 460 (2003) (declining to review an issue that was not

properly preserved under MCL 418.861a(11)); *Meagher v Wayne State Univ*, 222 Mich App 700, 724; 565 NW2d 401 (1997) ("[A]n objection on one ground is insufficient to preserve an appellate attack on different grounds . . . .").

D. DATE OF INJURY

Defendant's final argument is that the WCAC erred by finding that plaintiff's date of injury was his last day at work. We disagree.

As previously discussed, we review de novo questions of law decided by the WCAC. *Mudel*, 462 Mich at 697 n 3. Absent fraud, its findings of fact are conclusive if there is "any competent supporting evidence in the record." *Schmaltz*, 469 Mich at 471.

At the time relevant to this case, MCL 418.301(1) read in relevant part as follows:

> An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. . . . Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death. [1987 PA 28.[3]]

Defendant argues that the immediate injury, the cauda equina compression syndrome, occurred for unknown reasons between July 8 and July 14, 2008. Thus, defendant asserts that there is no evidence to support a finding that the cauda equina compression syndrome arose out of plaintiff's alleged employment with defendant. We reject this argument. The proper consideration is whether the fundamental, underlying cause of the cauda equina compression syndrome arose out of plaintiff's employment with defendant, not whether the cauda equina compression syndrome is immediately traceable to a single work-related incident. Cf. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 221-223; 501 NW2d 76 (1993) (when evidence showed that the plaintiff's job involved years of stress that eventually resulted in a myocardial infarction, that the myocardial infarction itself occurred outside the workplace did not bar the plaintiff from receiving WDCA benefits).

In *Wertz v Western Golf & Country Club (On Rehearing)*, 201 Mich App 4, 8; 506 NW2d 236 (1993), the plaintiff suffered an injury while working for Western Golf on December 30, 1981. The plaintiff subsequently returned to work for Western Golf on June 2, 1983, but her employment with Western Golf ended on the same day when she lifted an object and experienced "severe pain in her neck." *Wertz v Western Golf & Country Club*, 198 Mich App 189, 191-192; 497 NW2d 567, on reh 201 Mich App 4 (1993). This Court concluded that "[b]ecause [the] plaintiff sustained an injury on December 30, 1981, but returned to her regular duties, her date of disability should be considered to be June 2, 1983." *Wertz*, 201 Mich App at

[3] The current version of MCL 418.301(1) was established by 2011 PA 266.

8. Citing MCL 418.301(1), we reasoned that June 2, 1983, "was the last day on which she was subjected to the conditions that resulted in disability." *Id.*

We conclude that the WCAC's finding that plaintiff's date of injury was his last day of work is supported by competent evidence. *Schmaltz*, 469 Mich at 471. Dr. Wessinger testified that plaintiff's disc herniation at L3-L4 could have originated in March 2008. In March 2008, plaintiff injured his back when he rotated the spine in his lower back while lifting a box of tiles. The injury slowly worsened in the subsequent months because of plaintiff's age and the physical nature of his job, which are compounding factors for disc degeneration. Eventually, plaintiff was medically examined on July 8, 2008. The MRI indicated that plaintiff had a noteworthy disc herniation at L3-L4, but it did not indicate that plaintiff had cauda equina compression. On July 13, 2008, plaintiff's disc degeneration culminated in a ruptured disc at L3-L4, resulting in the cauda equina compression. Dr. Wessinger explained that the March 2008 incident was the most straightforward cause of plaintiff's back pathology because plaintiff did not identify any other possible triggering incident. Further, Dr. Wessinger's opinion is supported by the medical testimony of Dr. Palavali, who explained that physical labor for a period of 18 years could be a contributing factor to disc degeneration.

Finally, we note that defendant correctly observes that the WCAC listed the wrong date when it corrected plaintiff's last day of work. Contrary to the WCAC's correction, plaintiff's last day of work was actually July 11, 2008, because July 12, 2008, was a Saturday. Thus, we remand to the WCAC for the sole purpose of correcting this error.

Affirmed and remanded for the sole purpose of changing plaintiff's last day of work to July 11, 2008. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Patrick M. Meter
/s/ Michael J. Riordan